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No. 06-425

Supreme Court, U.S.
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In the Supreme Court of the United States

JANE DOE (A.H.),

Petitioner,

v.

CARNIVAL CORPORATION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION

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COUNTER STATEMENT OF THE QUESTIONS PRESENTED

Whether 46 U.S.C. App. § 183b(c) can be reasonably construed to abrogate the enforceability of a legal, one-year, ticket contract limitation on actions against an adult merely because she was a minor at the time of the alleged injury.

TABLE OF CONTENTS

COUNTER STATEMENT OF THE QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

STATEMENT CONCERNING CITATIONS AND PARTIES 1

STATEMENT OF THE CASE 1

SUMMARY OF ARGUMENT 3

REASONS FOR DENYING THE PETITION 4

A. Petitioner Urges a Strained Reading of the Applicable Statutory Language in Title 46, United States Code, Appendix Section 183b(c) 5

B. Section 183b(c) Demonstrates Congress's Intent that Ticket Limitations Provisions Shall Be Enforceable Against Minors Once the Disability of Minority Is Lifted 9

1. Petitioner's Argument Would Reduce Much of the Statutory Language to Mere Surplusage 9

2. Minority Is Not an Ongoing Disability 11

C. Petitioner's Argument Would Yield Absurd Results 12

CONCLUSION 12

TABLE OF AUTHORITIES

CASES

Bautista v. Star Cruises,
396 F.3d 1289, 1295 (11th Cir.),
cert. dismissed, 125 S. Ct. 2954 (2005) 7

Boehnen v. Carnival Corp.,
778 So. 2d 1084 (Fla. Ct. App. 2001) 11

Carnival Cruise Lines, Inc. v. Shute,
499 U.S. 585 (1991) 3, 4, 5

Collins v. Dolphin Cruise Lines, Inc.,
625 So. 2d 1308 (Fla. Ct. App. 1995) 5

Connecticut Nat'l Bank v. Germain,
503 U.S. 249 (1992) 7

Ford v. Moore,
296 F.3d 1035 (11th Cir. 2002) 9

Gibbs v. Carnival Corp.,
314 F.3d 125 (3rd Cir. 2002) 10

Nash v. Kloster Cruise A/S,
901 F.2d 1565 (11th Cir. 1990) 5

Norwegian Cruise Line, Ltd. v. Clark,
841 So. 2d 547 (Fla. Ct. App. 2003) 5

Scheibel v. Agwilines,
156 F.2d 636 (2d Cir. 1946) 7, 8

United States v. Menasche,
348 U.S. 528 (1955) 9

STATUTES

46 U.S.C. App. § 183b(a) 2, 5

46 U.S.C. App. § 183b(c) . . . . . *passim*

46 U.S.C. App. § 763a 2, 5

N.C. Gen. Stat. § 1-17 (2004) 11

STATEMENT CONCERNING CITATIONS AND PARTIES

Citations to Petitioner's Appendices are denoted herein by reference to the Appendix and page number; i.e., "*Pet. App. __ at __a*". Respondent is alternatively referred to herein as "Carnival" or "Respondent".

STATEMENT OF THE CASE

Petitioner brought suit alleging that she was sexually assaulted, during a Carnival cruise, on or about March 18, 2003. Petitioner's date of birth is August 2, 1985. Thus, Petitioner was seventeen (17) years of age at the time of the subject cruise, and she reached eighteen (18) years of age approximately five months after the subject cruise. Petitioner filed her complaint on March 1, 2005, nearly two years after the subject cruise and approximately nineteen (19) months after her eighteenth birthday. (*Pet. App. C at 7a-8a*).

Carnival issued Petitioner a ticket contract that contained the following limitation on actions:

> Carnival shall not be liable for any claims whatsoever for personal injury, or illness or death of the guest unless full particulars in writing are given to Carnival within 185 days after the date of the injury, event, illness or death giving rise to the claim. Suit to recover on any such claim shall not be maintainable unless filed within one year after the date of the injury, event, illness or death. . . . Guest expressly waives all other potentially applicable state or federal limitations periods.

(*Pet. App. C. at 8a-9a*). Both the District Court and the Eleventh Circuit found that this ticket limitation provision was consistent with the statutory minimum of 46 U.S.C. App. 183b(a). (*Pet. App. B at 4a; App. C at 12a*). Because Petitioner filed suit more than a year after her eighteenth birthday, Carnival moved to dismiss or, in the alternative, for summary judgment, on grounds that Petitioner's suit was untimely. (*Pet. App. C at 7a-10a*).

In response, Petitioner argued that the limitations provision of the contract did not apply to her because she was a minor at the time of the alleged injury and, notwithstanding the fact that she was no longer a minor at the time that she brought suit, because no legal representative had been appointed for her. Petitioner argued that, because she was a minor at the time of the alleged injury and because no legal representative had been appointed for her, 46 U.S.C. App. § 183b(c) allowed her three years to bring suit, pursuant to the general maritime statute of limitations provided by 46 U.S.C. App. § 763a. (*Pet. App. C at 13a-14a*).

The District Court concluded that 46 U.S.C. App. § 183b(c) did not support Petitioner's argument, because once Petitioner reached the age of majority she was no longer under any of the statute's enumerated disabilities. The District Court further concluded that the language of the statute plainly evidenced Congress' intent that ticket limitations provisions *shall be* enforceable against minors under certain conditions, and therefore once the disability of minority was removed Petitioner was not entitled to the statute's protection. The District Court granted summary judgment and dismissed the case, with prejudice, on a finding that Petitioner's suit was untimely. (*Pet. App. C at 13a-15a*).

The Eleventh Circuit affirmed the ruling of the District Court. The Circuit Court held that 46 U.S.C. App. § 183b(c) did not abrogate the enforceability of ticket contract limitation provisions against minors, but merely tolled their enforceability during the time that the party in question *is* a minor. In this case, the Circuit Court concluded, the statute merely tolled the operation of the contractually shortened statute of limitations until Petitioner reached the age of majority. And because Petitioner waited more than a year from that date to file suit, her claim was time-barred. (*Pet. App. B at 5a*).

SUMMARY OF ARGUMENT

The instant petition should be denied because this Court has previously resolved the enforceability of passenger ticket contracts. *See Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585 (1991) (enforcing forum selection clause). The Circuit and District Courts' interpretation of 46 U.S.C. App. § 183b(c) does not present an important or urgent public policy consideration because the statute is not intended for the protection of minors, but merely establishes guidelines for when a contractually-shortened statute of limitations can be enforced against persons with certain disabilities, including minors. Moreover, Petitioner has no standing to assert a policy for the protection of minors because she was not a minor at the time that the contractual limitation provision accrued against her.

On the substance of her argument, Petitioner urges a strained, and frankly illogical, reading of 46 U.S.C. App. § 183b(c). The plain language of the statute demonstrates that Congress only meant to toll the enforceability of contractually-shortened limitation provisions against minors during their minority, and then only until the appointment of

a legal representative (so long as that appointment occurs within three years). Petitioner's argument that her claim should have been tolled until the appointment of a legal representative, despite the fact that she was already a legal adult, is non-sensical, and would reduce much of the language of 46 U.S.C. App. § 183b(c) to mere surplusage. Her interpretation would also yield absurd results.

REASONS FOR DENYING THE PETITION

Petitioner has failed to explain why this Court should grant certiorari. This Court has previously held that cruise ticket contract provisions are enforceable against passengers who have reasonable notice of their terms. *See Shute*, 499 U.S. 585, 593-96. Because Petitioner was a legal adult more than one year prior to filing suit, the instant petition does not present any issues that materially differ from those addressed in *Shute*.

The Circuit and District Courts' interpretation of 46 U.S.C. App. § 183b(c) does not present an important or urgent public policy consideration because, contrary to Petitioner's contention, the statute is not intended for the protection of minors. Rather, as the courts below properly concluded, the statute does not abrogate the enforceability of contractual limitation provisions against minors, but merely tolls their operation against minors (as well as mentally incompetent and deceased persons). Because she was a legal adult for a period of more than one year prior to when she brought suit, Petitioner could not claim the benefit of the statute's tolling provision.

It follows that Petitioner has no standing to assert any basis for a broader protection of minors. Petitioner may have been a minor at the time of her alleged injury, but she ceased

being a minor within a few months afterward, at which time she became *sui juris* to bring her claim on her own behalf. Indeed, Petitioner's assertion that her claim should have been tolled until the appointment of a legal representative is, in light of the fact that she brought this suit as a legal adult and in her own capacity, inherently illogical.

A. Petitioner Urges a Strained Reading of the Applicable Statutory Language in Title 46, United States Code, Appendix Section 183b(c).

The fundamental issue in this petition is the enforceability of the provisions of cruise passenger ticket contracts. A cruise passenger ticket contract is considered a maritime contract to be analyzed under federal maritime law. *See Shute*, 499 U.S. at 590; *Nash v. Kloster Cruise A/S*, 901 F.2d 1565 (11th Cir. 1990); *Norwegian Cruise Line, Ltd. v. Clark*, 841 So. 2d 547, 549 (Fla. Ct. App. 2003). Although the general statute of limitations at maritime law is three years, *see* 46 U.S.C. App. § 763a, Congress has authorized ocean-going carriers to contractually shorten the time limitation, to no less than one year for bringing suit and to no less than six months for giving written notice, on actions for personal injury or death. *See* 46 U.S.C. App. § 183b(a).

It is by now beyond controversy that such contractually-shortened limitations provisions in passenger ticket contracts are enforceable as long as they are reasonably communicated to the passenger. *See Nash*, 901 F.2d at 1566. *See also Collins v. Dolphin Cruise Lines, Inc.*, 625 So. 2d 1308 (Fla. Ct. App. 1995). Petitioner does not deny that she received notice of the contract's terms. (*Pet. Brief at 3-4; Pet. App. C at 9a-10a*). Petitioner's only challenge is to the enforceability of the contractually-shortened limitation provision against her.

The basis of Petitioner's contention is that she was a minor at the time of her alleged injury.

But in making her argument, Petitioner urges a reading of 46 U.S.C. App. § 183b(c) that is simply not supported by the plain language of that statute, the relevant part of which provides:

> If a person who is entitled to recover on any such claim **is . . . a minor**, . . . any lawful limitation of time prescribed in such contract shall not be applicable so long as no legal representative has been appointed for such . . . minor. . . but shall be applicable from the date of the appointment of such legal representative: *Provided*, *however*, That such appointment be made within three years after the date of such death or injury.

(emphasis added). Petitioner construes this to mean that a person who "is" a minor at the time of injury is protected by the statute, and that the Court may simply disregard whether that person attains majority status at some point afterward. She asserts that "§ 183b(c) is devoid of any language which states that a minor loses her protection from a shipowner's limitation provision when she reaches the age of majority." (*Pet. Brief at 11*). *Nonsequitur ipsa loquitur*. Clearly, a "minor" who "reaches the age of majority" ***is*** no longer a minor.

As aptly noted by the District Court, Petitioner reads section 183b(c) to mean: "If a person who is entitled to recover on any such claim ***was*** mentally incompetent or a minor ***at the time of injury***, . . ." (*Pet. App. C at 13a*). Petitioner does not cite any authority for how she divines this interpretation, other than to offer the Webster's New College

Dictionary definition of the word, "entitle." (*Pet. Brief at 8*). Petitioner argues that her status as a minor became frozen in time at the moment that her "entitlement" to bring suit vested; i.e., at the time of the alleged injury. This argument was properly rejected by the District and Circuit courts.

When taking up an issue of statutory interpretation,

> the first step is to determine whether the statutory language has a plain and unambiguous meaning by referring to the language itself, the specific context in which that language is used, and the broader context of the statute as a whole. The inquiry ceases if the language is clear and the statutory scheme is coherent and consistent.

Bautista v. Star Cruises, 396 F.3d 1289, 1295 (11th Cir.), *cert. dismissed*, 125 S. Ct. 2954 (2005) (internal quotation marks and citations omitted). Or, as this Court has stated, "courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992).

The plain language and scheme of section 183b(c) does not suggest that Congress intended anything like what Petitioner proposes. Indeed, it clearly indicates the opposite. Section 183b was intended by Congress to completely preempt state law in respect to limitations on actions. *See Scheibel v. Agwilines*, 156 F.2d 636 (2d Cir. 1946). As the *Scheibel* court emphasized:

> Section 183b . . . is an integral part of Title 46, Chapter 8 entitled 'Limitation of Vessel Owner's Liability.' This chapter provides a comprehensive

> body of regulations declaratory of federal policy with respect to the specific matters with which they deal. . . . **The purpose of these provisions was to encourage shipbuilding and they should be liberally construed in the ship-owner's favor.**

Id. at 638 (internal citations omitted) (emphasis added).

It is not even necessary to "liberally" construe section 183b(c) in Carnival's favor, because the statute's plain meaning and effect is clear and unambiguous. As was properly concluded in the courts below, the tolling effect of section 183b(c) only runs to the extent of a minor's incapacity to bring suit (and even then only for three years). Once that incapacity is lifted, the limitation provision is no longer tolled.

The first part of the statute speaks in the present tense as to whether the plaintiff "is" a mentally incompetent person or a minor. Thus, only one who "is" a minor can be protected by the statute's tolling provision. Petitioner has acknowledged that she ceased being a minor on August 2, 2003, at which time the limitation provision was no longer tolled (and this assumes that no legal representative had been appointed for her up to that date). While the latter part of the statute provides that a limitation provision "shall be applicable" against a minor from the date of appointment of a legal representative, once Petitioner reached the age of majority, she became *sui juris* to act as her own legal representative. Petitioner tacitly conceded this when she brought suit in her own capacity, without the appointment of a legal representative or guardian.

B. Section 183b(c) Demonstrates Congress's Intent that Ticket Limitations Provisions Shall Be Enforceable Against Minors Once the Disability of Minority Is Lifted.

It is a fundamental tenet of statutory construction that a court "must give meaning to all the words in the statute," and therefore "a statute is to be interpreted so that no words shall be discarded as being meaningless, redundant, or mere surplusage." *Ford v. Moore*, 296 F.3d 1035, 1038 (11th Cir. 2002) (citations omitted). In other words:

> The cardinal principle of statutory construction is to save and not to destroy. It is [this Court's] duty to give effect, if possible to every clause and word of a statute rather than to emasculate an entire section. . .

United States v. Menasche, 348 U.S. 528, 538-39 (1955) (citations omitted).

Petitioner would reduce much of section 183b(c) to mere surplusage by emasculating the provision that limitations clauses, such as the one at issue, "shall be" enforceable against minors under certain conditions; i.e., when the disability of minority is cured by the appointment of a legal representative. As well, Petitioner's argument ignores the plain fact that the disability of minority is not an ongoing one.

1. Petitioner's Argument Would Reduce Much of the Statutory Language to Mere Surplusage.

Petitioner argues that Section 183b(c) can be harmonized with what she characterizes as the traditional common law prohibition on enforcing contracts against minors. But taken

to its logical conclusion, Petitioner's argument would ignore the latter part of section 183b(c), which provides:

> any lawful limitation of time prescribed in such contract shall not be applicable so long as no legal representative has been appointed for such . . . minor, . . . **but shall be applicable** from the date of the appointment of such legal representative: *Provided, however*, That such appointment be made within three years after the date of such death or injury.

(emphasis added). If a ticket contract limitation provision is unenforceable against a minor, then what is the point of the above-quoted language?

Clearly, section 183b(c) provides that a lawful limitation prescribed in a ticket contract is enforceable against one who "is" a minor from the date of the appointment of a "legal representative." *See Gibbs v. Carnival Corp.*, 314 F.3d 125 (3rd Cir. 2002) (holding that ticket limitation provision is enforceable against minor from date of appointment of a legal representative under law of minor's state of domicile). This renders the plain language of the statute as being logically incompatible with Petitioner's argument, because if Congress had intended to abrogate the enforceability of contractually-shorted limitations provisions against minors, it would have simply said so rather than provided for their enforceability upon appointment of a legal representative. The only logical interpretation of the entire language of the statute is that which the District and Circuit courts concluded was the correct one – that the statute merely tolls the enforceability of the contractual limitation provision.

2. Minority Is Not an Ongoing Disability.

As was properly determined by the District and Circuit courts, below, Petitioner's reliance on *Boehnen v. Carnival Corp.*, 778 So. 2d 1084 (Fla. Ct. App. 2001) is misplaced. In that case, the plaintiff, Tonya Boehnen, allegedly "was a nineteen year old mentally handicapped young woman" who did not have a legal guardian at the time that she brought suit. 778 So. 2d at 1084. The alleged disability in Ms. Boehnen's case was not minority, but a mental handicap. Consequently, the ticket limitation provision was tolled in her case. *Id.*

Petitioner did not allege that she was under some disability **other than** her minority. Yet she argues that Carnival's ticket limitation provision could only run against her from the date of the appointment of a legal representative. This is completely nonsensical, as the appointment of a legal representative for someone who was under no disability to bring suit in her own right would have been a pointless exercise.

Petitioner argues that "[t]here is no articulated difference between the protection afforded a mentally incompetent person and a minor by 46 U.S.C. App. § 183b(c)." (*Pet. Brief at 12*). However, unlike the other disabilities enumerated in the statute – i.e., death and mental incompetence – minority is not a continuous state of being. Rather, the disability of minority ends on a date certain by operation of law. In this case, that date certain was Petitioner's eighteenth birthday. *See* N.C. Gen. Stat. § 1-17 (2004).[1] Consequently, the courts below properly concluded that the statute merely tolled the applicability of the

[1] It is undisputed that, at all times relevant hereto, Petitioner was a resident of North Carolina.

contractual limitation period until the end of Petitioner's minority.

C. Petitioner's Argument Would Yield Absurd Results.

Petitioner's position is not only internally contradictory; it would lead to absurd results. For example, if the Court were to accept Petitioner's argument, then a person who is injured on the eve of her eighteenth birthday would be entitled to wait until the eve of her twenty-first birthday before bringing suit, if no legal representative is appointed beforehand. By contrast, a ten-year-old minor with an appointed legal representative would have to bring suit within a year; i.e., by age eleven.

And how does Petitioner support her argument that a person who was a minor at the time of injury can wait for the appointment of a legal representative before filing suit, but if no legal representative is appointed she can file suit anyway within three years? What is it that changes about the person's standing at the end of those three years? Petitioner does not make this clear.

This demonstrates that Petitioner's reading of section 183b(c) is nonsensical. Carnival's interpretation, by contrast, adheres to the plain meaning of the statute and other relevant authorities. There can be no more sensible interpretation than that reached by the courts below: Petitioner's suit was time-barred. The petition should, therefore, be denied.

CONCLUSION

Petitioner has failed to explain why this Court should grant certiorari. The matter of the enforceability of passenger

ticket contracts has long been resolved by this Court, and Petitioner has failed to demonstrate why her petition raises any materially distinct issues. Petitioner lacks standing to assert the protection of minors because she was not a minor at the time that the contractually-enforced limitation provision accrued against her. Moreover, Petitioner's argument is fundamentally illogical, as it avoids the plain, direct meaning of 46 U.S.C. App. § 183b(c), which merely tolls the operation of contractual limitations provisions against minors, and plainly does not abrogate their enforceability. The instant Petition should, therefore, be denied.

Respectfully submitted,

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